

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

ROBERT SIOLESKI,

Plaintiff,

9:20-CV-0027
(GLS/TWD)

v.

DEPT OF CORRECTIONS
SUPERINTENDENT - BELL et al.,

Defendants.

APPEARANCES:

ROBERT SIOLESKI
Plaintiff, pro se
03-A-2802
Clinton Correctional Facility
P.O. Box 2000
Dannemora, NY 12929

GARY L. SHARPE
Senior United States District Judge

DECISION and ORDER

Plaintiff Robert Sioleski commenced this civil rights action in the Eastern District of New York in November 2019, by filing a pro se complaint. Dkt. No. 1 ("Compl."). Plaintiff did not pay the filing fee and sought leave to proceed in forma pauperis (IFP). Dkt. No. 2. On January 6, 2020, the Honorable LaShann DeArcy Hall of the Eastern District of New York ordered that this action be transferred to the Northern District of New York. Dkt. No. 3. On January 9, 2020, this action was transferred to this District and administratively closed due to plaintiff's failure to comply with the filing fee requirements. Dkt. No. 4 ("Case Transfer"); Dkt. No. 5 ("January 2020 Order"). In the January 2020 Order, the Court advised plaintiff that, if

he desired to pursue this action, he must so notify the Court and either (1) pay the filing fee of \$400.00 in full, or (2) submit a completed, signed and properly certified IFP application, or a certified copy of his trust fund account statement for the six-month period immediately preceding the filing of the complaint. *Id.* at 2-3.

On January 21, 2020, the Court received from plaintiff a new IFP application, along with a letter request that this action be closed. See Dkt. No. 6 ("Second IFP Application"); Dkt. No. 7 ("Letter Request to Close the Action"). The Second IFP Application is dated January 14, 2020, and the Letter Request to Close the Action is dated January 15, 2020. *Id.* The Letter Request to Close the Action is addressed to the Clerk of the Court, bears the civil case number assigned to this action, and specifically states, in pertinent part, as follows: "I am sorry to say but can you close [this] case[?] I can't afford \$400.00 for court fees!" *Id.*

Because plaintiff filed the Second IFP Application, the Clerk was directed to re-open this action and restore it to the Court's active docket. See Dkt. No. 8. Thereafter, the Court received a letter from plaintiff requesting that the Clerk of the Court return his "paperwork" because he is "waiting until [he] get[s] more money!" Dkt. No. 9 ("Second Letter Request").

The Court construes plaintiff's Letter Request as a notice of voluntary dismissal, particularly in light of the Second Letter Request.

Pursuant to Rule 41(a)(1)(A)(i) of the Federal Rules of Civil Procedure, "the plaintiff may dismiss an action without a court order by filing . . . (i) a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment[.]" Rule 41(a) further provides that unless the notice provides otherwise, "the dismissal is without prejudice." Fed. R. Civ. P. 41(a)(1)(B).

As of the date hereof, plaintiff has not complied with the filing fee requirements for this

action and, as a result, the Court has not considered the sufficiency of his complaint pursuant to 28 U.S.C. § 1915(e)(2)(B) and/or 28 U.S.C. § 1915A(b) and directed service on one or more of the named defendants. Accordingly, plaintiff is entitled to withdraw this action.

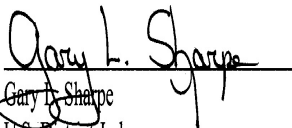
WHEREFORE, it is hereby

ORDERED that, in accordance with Fed. R. Civ. P. 41(a), this action is **voluntarily withdrawn and dismissed without prejudice** as requested by plaintiff (Dkt. Nos. 7, 9); and it is further

ORDERED that the Clerk serve a copy of this Decision and Order on plaintiff.

IT IS SO ORDERED.

January 29, 2020
Albany, New York


Gary L. Sharpe
U.S. District Judge